

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

RECEIVED / 11:00 AM; DIVISION

98 SEP - 3 PM 2:43

DOCKET SECTION

42393

LOVE FIELD SERVICE
INTERPRETATION PROCEEDING

Docket OST-98-4363 - 15

**CONSOLIDATED OPPOSITION OF THE CITY OF
DALLAS TO MOTIONS TO DISMISS AND TO ENLARGE
TIME FOR RESPONSE TO ORDER 98-8-29**

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September 3, 1998

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LOVE FIELD SERVICE
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As detailed below, the City of Dallas opposes the efforts of the City of Fort Worth, American Airlines (“American”) and the Dallas-Fort Worth International Airport ("DFW") (collectively, the “Moving Parties”) to manipulate the timing and content of this proceeding by moving to (a) dismiss this proceeding (Fort Worth’) and (b) delay this proceeding for various amounts of time (Fort Worth, DFW, and American²).

The Department of Transportation acted correctly in setting a short, but reasonable, schedule for filings in this proceeding. Dallas agrees with DOT that it is the proper role of the

¹ Motion of the City of Fort Worth, Texas, to Dismiss Proceeding (August 31, 1998), in Docket OST-98-4363

² Motion of the City of Fort Worth, Texas, for Additional Time (August 31, 1998); Petition for Reconsideration of Order 9809-29 and Motion for Enlargement of Time of the Dallas-Fort Worth International Airport (September 1, 1998); and Motion of American Airlines, Inc., for an Extension of Time and for Clarification of Order 98-8-29 (September 2, 1998); all in Docket OST-98-4363.

Department to take the lead in interpreting and applying those federal laws that it has the duty to enforce, as well as the contractual obligations (“grant assurances”) entered into by airport sponsors, and that this proceeding is an appropriate vehicle in which to reach and announce that interpretation.

The specific motions filed by the Moving Parties are addressed below.

I. OPPOSITION TO MOTIONS TO EXTEND TIME

As the Department noted, these are not new issues. All of the parties have had months to develop their positions on these issues and, as the DOT noted,³ have already written extensively on these questions in the various court proceedings and in filings at DOT. In fact, lengthy summary judgment motions speaking to these and other topics were recently filed in the state court proceeding.⁴ It should be a relatively simple matter for the parties to present their already-formulated positions in this proceeding.

Dallas is also subject to the procedural schedules and deadlines of which the Moving Parties complain, and does not anticipate any difficulty in meeting the DOT’s filing schedule. In fact, the abbreviated nature of this response is due to the fact that Dallas is devoting its time to a substantive response to the DOT’s Order, rather than extensive procedural maneuvering.

³ DOT Order 98-8-29, Order Instituting Proceeding in Docket OST-98-4363 (hereafter, "OIP"), at 5.

⁴ *City of Ft. Worth, et al. v. City of Dallas, et al.*, Tarrant County District Ct. No. 48-17 1109-97.

The Moving Parties are seeking extensions of differing lengths. What they have in common, however, is that the requested extensions all fall after the date the state court could rule on the pending Motions for Summary Judgment. The Moving Parties have all resisted efforts to extend the deadlines or postpone the October 1 hearing in the state court action. Dallas anticipates that if the DOT ruling comes down after the ruling on the Motions for Summary Judgment, Fort Worth and American will argue that the ruling of DOT is moot or of no legal effect because of when it was handed down. If it is their intention ever to make this (or a similar) argument, Dallas believes they should be up front with the DOT about their intentions.

Dallas would be the first to agree to an extension if it were persuaded that it was motivated by a need for more time. Dallas is not so persuaded, and would, accordingly, request that the motions for extension of time be denied.

II. OPPOSITION TO MOTIONS TO DISMISS

As the Department noted, many of the issues at stake between the parties to the various state and federal court proceedings are rooted in questions of federal aviation law, which fall within the proper purview of the DOT. Dallas agrees with DOT's statement that "the most effective step [DOT] can take will be to issue a ruling on the major federal law issues raised by the dispute, which involve the interpretation of federal statutes whose administration is the responsibility of this Department." OIP at 1.

There is a great need for DOT to speak first and clearly regarding its interpretation of these laws as applied to the particular facts existing at Love Field. For the Department to delay taking a position until after the state and federal courts have ruled on these matters would

increase the risk that the parties will be placed under inconsistent obligations, finding themselves torn between a court decision or decisions and the requirements of the DOT. As Southwest Airlines correctly observed in its response to the various motions to extend time,⁵ “significant federal issues have been implicated in the litigation currently pending in the Texas courts, and . . . those federal issues should be addressed promptly by the Department in order to help bring to closure the long-raging dispute that has created needless and injurious uncertainty over the role of Love Field in the national air transportation system.” Southwest Consolidated Answer at 2. As the owner and operator of Love Field, no party suffers worse under the existing uncertainty than the City of Dallas. The state and federal courts cannot be guided by the interpretation to be issued by the DOT if the Department does not take this chance to speak.

CONCLUSION

As stated above, Dallas believes that DOT “got it right” in the Department’s Order Instituting Proceedings, that the proceeding is necessary and appropriate and should continue, and that the procedural schedule set out by the Department is both achievable and appropriate. Dallas requests that the Motions filed by the Moving Parties be denied, and that DOT’s order denying additional time be issued by the close of business today, September 3, so that the parties might complete their comments in a timely manner.

⁵ Consolidated Answer of Southwest Airlines Co. to Motions for Extension of Time (Sept. 2, 1998) in Docket OST-98-4363.

Respectfully submitted,

A handwritten signature in cursive script, reading "Rise J. Peters", written over a horizontal line.

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September 3, 1998

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